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Our Supreme Court Holds

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Wisconsin. It is not yet known whether an appeal will be taken in the Rice case and a determination by the Supreme Court secured.—Wisconsin Bar Bulletin.

OUR SUPREME COURT HOLDS:

In Sarah (Mrs. Melvin) Tweten, Pltf. and Resp., vs. North Dakota Workmen's Compensation Bureau, a Branch of the Executive Branch of said State of North Dakota, Deft. and Applt.

That under the North Dakota Workmen's Compensation Act (Laws 1935, ch. 286, Sec. 1), the term "injury" includes "any disease approximately caused by the employment."

That pneumonia, contracted by an employee of a County, due to exposure while repairing buildings, constructing fences and planting trees on the County Fair Grounds, is an "injury" compensable under the North Dakota Workmen's Compensation Act.

That for reasons stated in the opinion, allowances made by the trial court for attorney's fees and witnesses fees are sustained.

From a judgment of the District Court of Wells County, McFarland, J., defendant appeals.

AFFIRMED. Opinion of the Court by Christianson, J. Burke, J., did not participate.

In S. E. Ellsworth, Pltf. and Applt., vs. Martindale-Hubbell Law Directory, Inc., a Corporation, Deft. and Respt.

That upon an appeal from a judgment where no settlement of the statement of the case has been had, this court can consider only those matters appearing upon the face of the judgment roll.

That the judgment roll consists of papers designated by statute and other documents cannot be considered upon appeal as a part thereof merely because the clerk has attached them to the statutory judgment roll.

That where the case has not been settled, this court upon appeal cannot consider the minutes of the clerk of the trial court or an abbreviated transcript certified to only by the Court Reporter as such documents are not a part of the judgment roll, unless they have been made part of the settled statement of the case.

That a presumption exists in favor of the correctness of an order and judgment of the trial court. The burden is upon one alleging error to demonstrate it upon a legally constituted and certified record.

Appeal from the District Court of Stutsman County. Hon. Geo. M. McKenna, Special Judge. AFFIRMED. Opinion of the Court by Morris, J. Burr, J., concurs specially.

In O. V. Anderson, Pltf. and Resp., vs. A. C. Anderson, Deft. and Applt.

That failure of a driver of an automobile to slacken speed because of protest by a guest is no evidence of negligence or wantonness on the part of the driver, and in an action brought by the guest, based solely on the alleged gross negligence of the driver, the driver was entitled to an instruction to this effect

That in the case at bar it is held: that because determination of the alleged gross negligence of the driver was a close question of fact the refusal of the trial court to instruct the jury as to the lack of such probative effect in the protest against speed constituted reversible error. APPEAL from the District Court of Ward County. Hon. John C. Lowe, Judge. REVERSED. Opinion of the Court by Burr, J.

In State of North Dakota, Pltf. and Resp., vs. Syvert Halverson, doing business as Halverson Ice Company, Deft. and Applt.

That the provision of chapter 315, Session Laws N. D. 1931, that the Workmen's Compensation Bureau shall cause suit to be brought for the collection of premiums and penalties within twenty days after the default of any employer, places upon the Bureau the duty to bring suit within the time speci-

fied, but is not a statute of limitations and does not create a condition precedent to the maintenance of an action by the Bureau. APPEAL from the District Court of Barnes County. Hon. M. J. Englert, Judge. AFFIRMED. Opinion of the Court by Morris, J.

In G. E. Petters, Pltf. and Peti., vs. The Charlson Estate, a corporation, Deft. and Resp.

That under the provisions of section 6, chapter 161, Session Laws N. D. 1937, an extended period of redemption terminates thirty days after default in the payments or any of them required to be made by the order of extension unless the default is cured or the original order revised or altered before the expiration of such default period.

That one who acquiesces in and avails himself of the terms of an order extending the period of redemption will not thereafter be heard to complain that some of the terms of said order are contrary to the statute.

That the order extending the period of redemption in this case is examined, and it is held not to conflict with the statute providing that if the mortgagor shall default in the payments prescribed in the order. his right of redemption shall terminate thirty days after such default.

Review by writ of certiorari of proceedings had in the District Court of Williams County, North Dakota, under chapter 161, Session Laws of North Dakota for 1937, before Hon. A. J. Gronna, Judge. REVERSED. Opinion of the Court by Morris, J. Christianson, J., dissenting.

IN THE MATTER OF THE ESTATE OF ROBERT J. McKEE, DECEASED.

William McKee, Jr., et al., Petrs., Conts. and Applts., vs. C. S Buck, Jr., etc. et al., Respts., Propts. and Applts.

That a party who voluntarily acquiesces in or recognizes the validity and propriety of a judgment, order or decree against him, or takes a position inconsistent with the right to appeal therefrom, thereby impliedly waives his right to have such judgment, order or decree reviewed by an appellate court.

That in this case, an appeal was taken to the district court from an order of the county court dismissing a petition for contest of a will after probate; the district court reversed the order of the county court and the record was thereupon remanded to the county court, and the county court rendered a decree setting aside the probate and revoking the letters testamentary; the party adversely affected by the order of the district court and the decree of the county court thereupon applied to the county court for a rehearing, which application was denied. Thereafter such party took appeal to the Supreme Court from the order of the district court. For reasons stated in the opinion it is held that such party waived the right to appeal to the supreme court from the order of the district court. APPEAL from the District Court of Stutsman County. Englert, J. Appellants apply for an order directing the county court to return certain files and documents to the district court of Stutsman county, and further directing the judge of the district court of said county to order such files and documents to be transmitted to the supreme court as a part of the record on appeal in the above entitled matter. APPLICATION DENIED. Per curiam opinion.

In Clara Vernona Buchanan, Pltf. and Applt., vs. Hobar Buchanan, Deft. and Resp.

That the record is examined and it is held that the judgment granting plaintiff a divorce is sustained by the evidence.

That an allowance of $600 alimony, payable in monthly installments of $25 each to a wife, upon a judgment of divorce, is adequate where the evidence shows, that the wife brought no property to the marriage; that the husband has no property in excess of his liabilities; that the husband's net income which was $1103.24 in 1935; $1373.39 in 1936; $1859.66 in 1937, has been materially reduced; that there are no children; that the wife is relatively young and vigorous and has some skill as a "beauty operator" and that she was not wholly without fault in the difficulties which brought about the divorce.

Appeal from the District Court of Walsh County. Hon. W. J. Kneeshaw, Judge. AFFIRMED. Opinion of the court by Burke, J.